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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/708,709	11/09/2000	MARK TURCOTTE	067177.0103	2177
25227	7590	06/03/2004		
MORRISON & FOERSTER LLP 1650 TYSONS BOULEVARD SUITE 300 MCLEAN, VA 22102			EXAMINER JASTRZAB, KRISANNE MARIE	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/708,709

Applicant(s)

TURCOTTE, MARK

Examiner

Krisanne M. Thornton

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 and 29-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-22 and 29-48 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- ☐ Interview Summary (PTO-413) Paper No(s). _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Drawings

The drawings were received on 3/9/2004. These drawings are accepted. Receipt of Applicant's Petition to Withdraw the Office Action of September 9, 2003 along with the filing of these drawings is acknowledged. The Examiner informed Atty. Bockman on 6/1/2004 that the office action will not be withdrawn, but that the time period for response will be re-started as of the mailing date of the PTO 948 form (12/11/2003) and a refund for the 3 month extension of time for response will be credited to Applicant's deposit account No. 03-1952.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Art Unit: 1744

Claims 1-8, 10-22 and 29-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mazzilli U.S. patent No. 5,523,057 in view of Haidinger et al., U.S. patent No. 5,505,904.

Mazzilli teaches an apparatus for retrofitting an air conditioning system such as that in a residence, wherein a housing is provided for insertion within the system ducting. The housing contains a source of ultraviolet light in the form of fixture-mounted lamps, which are driven by remotely located ballasts. The housing includes aluminum reflective components, as well as means indicating activation of the lamps. The housing has access means which are coupled to a safety switch to prevent entry therein during lamp operation. An air pressure switch is also provided which works in conjunction with the remotely positioned power pack for controlled activation of the lamps when air flow is sensed. Mazzilli further teaches placement of a second UV lamp source downstream of a wet coil within the air conditioning system. See column 5, line 35 through column 6, line 46, and column 6, line 62 through column 7, line 10.

Haidinger et al., teach an air disinfection unit having UVC lamps, as is well known in the art, but also utilizing fluorescent fixture ballasts to energize the lamps because such ballasts allow the lamps to run at higher energy levels with increased bactericide activity with substantially less heat generation. See column 4, lines 40-55.

It would have been obvious to one of ordinary skill in the art to utilize the fluorescent ballast means of Haidinger et al., within the air disinfection system of Mazzilli because such ballasts allow the lamps to run at higher energy levels with increased bactericide activity with substantially less heat generation.

With respect to claims 1, 6, 10 and 29, Haidinger et al., is silent as to the conversion specifications of the ballasts, however, they are conventional ballasts and would therefore provide intrinsically provide such specifications.

It is noted that Mazzilli clearly teaches remote placement of the power pack such as "next to" and thus not attached to, the ventilation duct and that such placement would intrinsically provide that the ballasts within the power pack are not subject to all of the vibrations of the system as they would not be subject to those of the duct.

Allowable Subject Matter

Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the closest prior art of record fails to teach or suggest the remote ballast configuration in an air conditioning system having reflectors that spin as air flows through the duct.

Response to Arguments

Applicant's arguments filed 3/9/2004 have been fully considered but they are not persuasive.

Applicant argues that Mazzilli fails to teach remote placement of the power pack and alleges that Mazzilli's "adjacent to" means "attached" because that is how it is depicted in Fig. 1. However, the Examiner would disagree and point out that "adjacent"

Art Unit: 1744

does not require contact and the language of Mazzilli recites that the power pack is "remotely positioned" (column 6, line 10) and can be "next to a ventilation duct" (column 6, line 18) which again, does not require contact. It is further noted that Mazzilli specifically states that the power pack is shown in the single configuration of being attached solely "for ease of illustration" (column 6, lines 11-13).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 1744

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab (formerly Thornton) whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Wed. 6:30am-4:00pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Krisanne Jastrzab (formerly
Thornton)
Primary Examiner
Art Unit 1744

June 1, 2004